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DRAFT SET OF RULES OF PROCEDURE AND EVIDENCE FOR THE INTERNATIONAL CRIMINAL COURT

Working paper submitted by Australia and the Netherlands

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I. INTRODUCTORY NOTE

1. The following draft set of Rules of Procedure and Evidence for the International Criminal Court has been prepared as a working paper for the August meeting of the Preparatory Committee on the Establishment of an International Criminal Court. The approach taken to issues in the draft Rules does not necessarily reflect the views of the Governments of Australia and the Netherlands. The purpose of the draft Rules is to assist discussions at the August meeting on procedural issues related to the operation of the Court.

2. As noted at various points, the draft Rules reflect provisions of the ILC draft statute. They also draw on the Rules of Procedure and Evidence of the International Tribunal for the former Yugoslavia. The non-papers concerning the Rules submitted by Australia and the United States of America to the Ad Hoc Committee were also drawn upon.

3. The delegations of Australia and the Netherlands have had the benefit of the views of other delegations on the draft Rules. Where appropriate, points raised by those delegations have been noted in the text, without attribution to the delegations concerned.

4. A number of delegations expressed views in the Ad Hoc Committee on how the Rules of Procedure and Evidence of the International Criminal Court should be developed. Several of those delegations were of the view that the Rules should be developed and adopted by the negotiating States in conjunction with the Statute of the Court. While accepting this position, other delegations also stressed the importance of allowing the Judges of the Court to develop Rules relating to the internal functioning of the Court. The approach taken in the draft Rules reflects both views. At various points, the draft Rules indicate that matters should be addressed by the Judges in the "Supplementary Rules". It is envisaged that these Rules would be adopted by the Judges after their election. The issue of whether States parties should approve these Rules needs to be addressed.

5. The relationship of the Rules to be adopted by States with the Statute of the Court needs to be considered. If the Rules are to form an annex to the Statute, should the mechanism governing amendment of the Rules be different from that applying to the Statute? Consideration also needs to be given to whether the Judges have a role to play in the amendment of the Rules. The mechanism for amendment of the Rules will clearly have to be provided for in the Statute.

6. A consideration of the draft Rules may suggest to delegations that some of the matters addressed therein concern matters of principle which would be more appropriately dealt with in the Statute itself. Those delegations which are of this view may consider, accordingly, that the number of rules could be significantly reduced. It should be noted in this regard that the purpose of dealing with a broad range of matters in a detailed manner in the draft Rules was to promote full discussion of the relevant issues.

II. DRAFT SET OF RULES OF PROCEDURE AND EVIDENCE FOR THE INTERNATIONAL CRIMINAL COURT

PART I

GENERAL PROVISIONS AND DEFINITIONS

Rule 1

Adoption and amendment

These Rules of Procedure and Evidence have been adopted pursuant to article X (A 19 ILC) of the Statute of the International Criminal Court and may only be amended in accordance with that article.

Rule 2

Definitions

In the Rules, unless the context otherwise requires, the following terms shall mean:

Rules:	The Rules referred to in rule 1;
Statute:	The Statute of the International Criminal Court, which was adopted ...;
Court:	The International Criminal Court;
Accused:	A person against whom an indictment has been confirmed in accordance with article X (A 27 ILC) of the Statute;
Arrest:	The act of taking a suspect or an accused into custody by a national authority or by other authorities;
Investigation:	All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence;
Party:	The Prosecutor or the accused [there may be a need to provide for other parties including States and possibly victims];
Presidency:	The body composed of the President and the first and second Vice-Presidents as provided for in article X of the Statute;
President:	The President of the Court elected pursuant to article X (A 8 ILC) of the Statute;

Prosecutor:	The Prosecutor elected pursuant to article X (A 12 ILC) of the Statute;
Deputy Prosecutor:	A Deputy Prosecutor elected pursuant to article X (A 12 ILC) of the Statute;
Registrar:	The Registrar elected pursuant to article X (A 16 ILC) of the Statute;
State party:	A State which is a party to the Statute;
State:	Member or non-member of the United Nations or a self-proclaimed entity de facto exercising governmental functions, whether recognized as a State;
Supplementary Rules:	The Rules adopted by the Court pursuant to article X of the Statute;
Suspect:	A person concerning whom the Prosecutor possesses reliable information which tends to show that he or she may have committed a crime over which the Court has jurisdiction;
Transaction:	A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;
Victim:	A person against whom a crime over which the Court has jurisdiction has allegedly been committed.

Rule 3

Interpretation of the Rules

(A) To the extent that the plain language of the Rules does not require otherwise, they should be interpreted to ensure simplicity in procedure, fairness to the parties and the elimination of unjustified delay.

(B) In the Rules, the singular shall include the plural, and vice versa.

Rule 4

Languages

(A) As provided for in article X (A 18 ILC) of the Statute, the working languages of the Court shall be English and French [rule 5 could be incorporated here].

(B) An accused shall have the right to use his or her own language and to have the benefit of interpretation and translation as provided for in article X (A 41.1(f) ILC) of the Statute.

(C) Any other person appearing before the Tribunal, other than as counsel, who does not have sufficient knowledge of either of the two working languages may use his or her own language and have the benefit of interpretation and translation on the basis of the same criteria applied to an accused under article X (A 41.1(f) ILC) of the Statute.

(D) Counsel for an accused may apply to the Presiding Judge of a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Court to the extent, if any, determined by the President, taking into account the rights of the defence and the interests of justice.

(E) Documents filed with the Court shall be in one of the working languages or accompanied by a translation into one of those languages.

(F) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.

[Note: The issue of where the burden of translation costs should fall needs consideration.]

Rule 5

Authentic texts

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and the Rules shall prevail.

Rule 6

Non-compliance with the Rules

(A) Any objection by a party to an act of another party on the ground of non-compliance with the Rules shall be raised with the Presidency, Trial Chamber or Appeals Chamber, as appropriate, at the earliest opportunity.

(B) The Presidency, Trial Chamber or Appeals Chamber shall rule without delay on whether there has been non-compliance with the Rules.

(C) Where non-compliance is ruled to have occurred, the Presidency, Trial Chamber or Appeals Chamber shall have the discretion not to make an order if the non-compliance with a rule is not of a serious nature. The party at fault, however, must subsequently comply with the rule in question.

(D) Where the Presidency, the Trial Chamber or the Appeals Chamber rules that the non-compliance is of a serious nature, they may make an appropriate order, including the exclusion of evidence. In cases where the non-compliance is contrary to the fundamental principles of fairness and has occasioned a miscarriage of justice, an order may be made for the indictment against the accused to be dismissed.

(E) A party may appeal a ruling or order made by the Presidency or a Trial Chamber under this Rule to the Appeals Chamber.

PART II

ORGANIZATION OF THE COURT

SECTION 1. GENERAL

Rule 7

Solemn undertaking

(A) As required by article X (A 14 ILC) of the Statute, before first exercising their functions under the Statute, Judges and other officers of the Court shall make the following solemn undertaking:

> "I solemnly undertake that I will perform my duties and exercise my powers as X of the International Criminal Court honourably, faithfully, impartially and conscientiously and that I will respect the provisions of the Statute, Rules and Supplementary Rules of the Court."

(B) The undertaking, signed by the Judge or other officer of the Court and witnessed by X or his or her representative, shall be kept in the records of the Court.

Rule 8

Proceedings away from the seat of the Court

A Trial Chamber may exercise its functions at a place other than the seat of the Court, if so authorized by the President where it will ensure the efficient conduct of the trial and is in the interests of justice.

[Note: This Rule raises a number of issues including the need for the agreement of States parties or the host State for a Trial Chamber to exercise its functions away from the seat of the Court and whether authority to initiate such a step should rest with the President or the Trial Chamber.]

SECTION 2. THE JUDGES

Rule 9

Disqualification

(A) A member of the Presidency shall not be subject to disqualification from a trial or appeal because he or she participated in a decision by the Presidency under articles X (A 26(3), 27(5), 28, 29, 30(3) ILC) of the Statute concerning the case being tried or under appeal. A Judge shall not be subject to disqualification from a trial or appeal who has made a decision under articles X (A 26(3), 27(5), 28, 29, 30(3) ILC) of the Statute concerning the case being tried or under appeal pursuant to a delegation from the Presidency under article X (A 8(5) ILC) of the Statute.

(B) A member of the Presidency, who participated in the confirmation of the indictment against an accused under article X (A 27(2) ILC) of the Statute, may sit as a member of the Trial Chamber for the trial of that accused or as a member of the Appeals Chamber hearing an appeal in relation to that trial.

(C) No member of the Appeals Chamber shall sit on any appeal in a case in which he or she sat as a member of the Trial Chamber.

(D) As provided for in article X (A 37(5) ILC) of the Statute, any Judge who was a member of an Indictment Chamber may not subsequently sit as a member of a Trial Chamber hearing the case against the accused who was the subject of the proceedings before the Indictment Chamber.

(E) If a Judge is disqualified from continuing to sit in a part-heard trial and thereby deprives the Trial Chamber of its required quorum under article X (A 45(1) ILC) of the Statute, the Presidency may assign another Judge to the Chamber and order either a rehearing or continuation of the proceedings from that point. However, after the beginning of the presentation of evidence pursuant to rule 100, the continuation of the proceedings may only be ordered with the consent of the accused.

(F) If a Judge is disqualified from continuing to sit in a part-heard appeal and thereby deprives the Appeals Chamber of its required quorum under article X (A 49(4) ILC) of the Statute, the Presidency may assign another Judge to the Chamber drawn, subject to subrule (C) of this Rule, from those available for duty in a Trial Chamber.

[Note: Disqualification raises a number of issues such as whether a Judge who has confirmed an indictment should be allowed to sit as a member of the Trial Chamber which subsequently hears the case against the accused or the Appeals Chamber that hears an appeal in the case. The implications of disqualification will clearly also need to be considered in the context of the number of Judges comprising the Court and the number/type of Chambers.]

Rule 10

Illness or other incapacity

(A) If a Judge is, for reason of illness or other incapacity, unable to continue sitting in a part-heard trial, and thereby deprives a Trial Chamber of its required quorum under article X (A 45(1) ILC) of the Statute, the Presiding Judge may, if that inability seems likely to be of short duration, adjourn the proceedings. Otherwise he or she shall report to the Presidency which may assign another Judge to the Chamber and order either a rehearing or continuation of the proceedings from that point. However, after the beginning of the presentation of evidence pursuant to rule 100, the continuation of the proceedings may only be ordered with the consent of the accused.

(B) If a Judge is, for reason of illness or other incapacity, unable to continue sitting in a part-heard appeal, and thereby deprives the Appeals Chamber of its required quorum under article X (A 49(4) ILC) of the Statute, the Presiding Judge may, if that inability seems likely to be of short duration, adjourn the proceedings. Otherwise he or she shall report to the Presidency which may assign a Judge to the Chamber drawn, subject to rule 9(C), from those available for duty in a Trial Chamber.

Rule 11

Death

(A) If the death of a Judge deprives a Trial Chamber of its required quorum under article X (A 45(1) ILC) of the Statute, the Presidency may assign another Judge to the Chamber and order either a rehearing or continuation of the proceedings from that point. However, after the beginning of the presentation of evidence pursuant to rule 100, the continuation of the proceedings may only be ordered with the consent of the accused.

(B) If the death of a Judge deprives the Appeals Chamber of its required quorum under article X (A 49(4) ILC) of the Statute, the Presidency may assign another Judge to the Chamber drawn, subject to rule 9(C), from those available for duty in a Trial Chamber.

Rule 12

Loss of office

(A) If a Judge ceases to hold office pursuant to the application of article X (A 15 ILC) of the Statute during a part-heard trial and thereby deprives a Trial Chamber of its required quorum under article X (A 45(1) ILC) of the Statute, the Presidency may assign another Judge to the Chamber and order either a rehearing or continuation of the proceedings from that point. However, after the beginning of the presentation of evidence pursuant to rule 100, the continuation of the proceedings may only be ordered with the consent of the accused.

(B) If a Judge ceases to hold office pursuant to the application of article X (A 15 ILC) of the Statute, and thereby deprives the Appeals Chamber of its required quorum under article X (A 49(4) ILC) of the Statute, the Presidency may assign another Judge to the Chamber drawn, subject to rule 9(C), from those available for duty in a Trial Chamber.

Rule 13

Resignation

(A) A Judge who wishes to resign shall communicate that decision in writing to the President who shall transmit it to X. The Judge shall endeavour to discharge his or her responsibilities in relation to uncompleted trials or appeals before their resignation takes effect.

(B) Where the resignation of a Judge takes effect during a part-heard trial and thereby deprives the Chamber of its required quorum under article X (A 45(1) ILC) of the Statute, the Presidency may assign another Judge to the Chamber and order either a rehearing or continuation of the proceedings from that point. However, after the beginning of the presentation of evidence pursuant to rule 100, the continuation of the proceedings may only be ordered with the consent of the accused.

(C) Where the resignation of a Judge takes effect during a part-heard appeal and thereby deprives the Chamber of its required quorum under article X (A 49(4) ILC) of the Statute, the Presidency may assign another Judge to the Chamber drawn, subject to rule 9(C), from those available for duty in a Trial Chamber.

[Note: Rules 10 to 13 raise a number of issues including whether the impact of a Judge's inability to continue sitting as a member of a Chamber could be lessened by reducing the quorum required for Chambers and whether alternate Judges should be required to be present during proceedings before they can be assigned to replace members of the Chambers - an alternative approach here may be to allow a replacement Judge to view video recordings of proceedings and permit him or her to have witnesses recalled. It should also be noted that these Rules are designed as temporary measures to cover the loss of a Judge. The permanent replacement of a Judge would have to be elected according to the requirements laid down in the Statute.]

Rule 14

Assignment of Judges

The assignment of Judges under rules 9 to 13 shall be governed by the procedure laid down in the Supplementary Rules.

[Note: Various mechanisms for assignment of Judges can be formulated. In light of the concerns expressed by a range of delegations in the Ad Hoc Committee, the

issue arises of whether the Presidency should have a role in assignment. This Rule might also be placed before rule 9.]

SECTION 3. THE PRESIDENCY

Rule 15

Election of the President

As provided for in article X (A 8 ILC), the President shall be elected by an absolute majority of the votes of the Judges composing the Court. The procedure for conducting the election shall be laid down in the Supplementary Rules.

[Note: Another approach would be for the President to be elected by States parties. If the States parties were to elect the President then an argument could be made for them to elect the Vice-Presidents and alternates.]

Rule 16

Death, loss of office or resignation of the President

If the President dies, ceases to hold office pursuant to article X (A 15 ILC) or resigns before the expiration of his or her term, the Judges shall by absolute majority elect from among their number a successor for the remainder of the term. The election shall be governed by the procedure determined by the Judges pursuant to rule 15.

Rule 17

Election of Vice-Presidents and alternate Vice-Presidents

As provided for in article X (A 8 ILC), the Vice-Presidents and alternate Vice-Presidents shall be elected by an absolute majority of the votes of the Judges composing the Court. The procedure for conducting these elections shall be laid down in the Supplementary Rules.

Rule 18

Death, loss of office or resignation of a Vice-President or an alternate Vice-President

If a Vice-President or alternate Vice-President dies, ceases to hold office pursuant to article X (A 15 ILC) or resigns before the expiration of his or her term, the Judges shall by absolute majority elect from among their number a successor for the remainder of the term. The election shall be governed by the procedure determined by the Judges pursuant to rule 17.

Rule 19

Functions of the Presidency

(A) The Presidency shall exercise the powers and functions conferred upon it by the Statute and these Rules.

(B) The procedures to govern the delegation of the powers of the Presidency provided for in article X (A 8(5) ILC) of the Statute shall be laid down in the Supplementary Rules.

(C) The Presidency shall exercise any powers and functions conferred upon it by the Supplementary Rules.

Rule 20

The President

(A) The President shall exercise the powers and functions conferred upon him or her by the Statute and these Rules.

(B) The President shall exercise any powers and functions conferred upon him or her by the Supplementary Rules.

Rule 21

The Vice-Presidents

(A) The Vice-Presidents shall exercise the powers and functions conferred upon him or her by the Statute and these Rules.

(B) The Vice-Presidents shall exercise any powers and functions conferred upon them by the Supplementary Rules.

Rule 22

Replacements

If neither the President nor the Vice-Presidents (or alternate Vice-Presidents when acting as Vice-Presidents) can carry out the functions of the President, these shall be assumed by the senior Judge, determined in accordance with the precedence of Judges provided for in the Supplementary Rules.

[Note: The mechanism of appointing replacements might also be determined by States.]

SECTION 4. INTERNAL FUNCTIONING OF THE COURT

Rule 23

Plenary sessions of the Court

The Judges shall meet in plenary to:

(i) Elect the President, the vice-Presidents and alternate Vice-Presidents;

(ii) Elect the Registrar and Deputy Registrar;

(iii) Adopt and amend the Supplementary Rules;

(iv) Decide upon matters relating to the internal functioning of the Chambers and the Court;

(v) Adopt the Annual Report provided for in article X of the Statute; and

(vi) Exercise any other functions provided for in the Statute, the Rules or the Supplementary Rules or as necessitated by the operation of the Court.

[Note: The tasks of plenary sessions would depend upon the eventual content of the Rules and Supplementary Rules.]

Rule 24

Timing and conduct of plenary sessions

The timing and conduct of plenary sessions shall be governed by the Supplementary Rules.

SECTION 5. THE CHAMBERS

Rule 25

Deliberations

The deliberations of the Chambers shall take place in private and remain secret.

[Note: This Rule is not intended to affect the transparency of proceedings before Chambers.]

Rule 26

Presiding Judges

(A) If the President is unable to exercise his or her functions as Presiding Judge of the Appeals Chamber under article X (A 9(1) ILC), that Chamber shall elect a Presiding Judge from among its number. The procedure for conducting the election shall be laid down in the Supplementary Rules.

(B) Where a Vice-President is a member of a Trial Chamber, he or she shall serve as its Presiding Judge. If the Vice-President is unable to exercise his or her functions as Presiding Judge of a Trial Chamber, that Chamber shall elect a Presiding Judge from among its number. The procedure for conducting the election shall be laid down in the Supplementary Rules.

SECTION 6. THE REGISTRY

Rule 27

Composition of the Registry

The Registry shall comprise the Registrar, the Deputy Registrar (if one has been elected) and such other staff appointed by the Registrar pursuant to article X (A 13(3) ILC) of the Statute.

Rule 28

Qualifications of the Registrar

The Presidency shall satisfy itself that the candidates it puts forward for the consideration of Judges in the ballot for the position of Registrar are of the highest calibre.

[Note: There may well be a need to establish detailed criteria for the qualifications of the Registrar.]

Rule 29

Election of the Registrar

As provided for in article X (A 13(1) ILC) of the Statute, the Judges shall elect the Registrar by an absolute majority by secret ballot. The necessary procedure for conducting the election shall be laid down in the Supplementary Rules.

[Note: Another approach would be for the States parties to elect the Registrar and the Deputy Registrar; see rule 32 below.]

Rule 30

Death, loss of office or resignation of the Registrar

If the Registrar dies, ceases to hold office pursuant to article X (A 15 ILC) of the Statute or resigns before the expiration of his or her term, the Judges shall by an absolute majority by secret ballot elect a replacement. The election shall be governed by the procedure determined by the Judges pursuant to rule 29.

Rule 31

Qualifications of the Deputy Registrar

The Presidency shall satisfy itself that the candidates it puts forward for the consideration of Judges in the ballot for the position of Deputy Registrar are of the highest calibre.

Rule 32

Election of the Deputy Registrar

As provided for in article X (A 13(1) ILC) of the Statute, the Judges shall elect the Deputy Registrar by an absolute majority by secret ballot. The election shall be governed by the procedure determined by the Judges pursuant to rule 29.

Rule 33

Death, loss of office or resignation of the Deputy Registrar

If the Deputy Registrar dies, ceases to hold office pursuant to article X (A 15 ILC) or resigns before the expiration of his or her term, the Judges shall by an absolute majority by secret ballot elect a replacement. The election shall be governed by the procedure determined by the Judges pursuant to rule 29.

Rule 34

Solemn undertaking

(A) Upon commencing employment, every staff member of the Registry shall make the same undertaking as required of Judges and other officers of the Court under rule 7.

(B) The undertaking, signed by the staff member and witnessed by the Registrar or Deputy Registrar, shall be kept in the records of the Court.

Rule 35

Functions of the Registrar

(A) The Registrar is charged with being the principal administrative officer of the Court by article X (A 13(1) ILC) of the Statute. Accordingly, under the authority of the Presidency, he or she shall be responsible for organizing the Registry and for the administration and servicing of the Court and shall serve as its channel of communication, in accordance with the Statute, Rules and Supplementary Rules of the Court. The Registrar shall assist the Chambers, the plenary meetings of the Court, the Judges and the Prosecutor in the performance of their functions.

(B) The Registrar shall also be responsible for the security of the Court in consultation with other organs of the Court and the host State.

(C) The duties of the Registrar shall be elaborated in the Supplementary Rules.

[Note: Further to subrule A, provision will also need to be made for a direct channel of communication between the Prosecutor and States.]

Rule 36

Role of the Deputy Registrar

(A) The Deputy Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Registrar until the office has been filled by election.

(B) The duties of the Deputy Registrar shall be elaborated in the Supplementary Rules.

Rule 37

Official of the Registry to serve as Registrar

(A) If both the Registrar and the Deputy Registrar are unable to carry out the duties of the Registrar on a temporary basis, the Presidency shall appoint an official of the Registry to discharge those duties for such time as may be necessary.

(B) If both offices are vacant at the same time, the Presidency, after consulting the other Judges shall appoint an official of the Registry to discharge the duties of the Registrar pending an election to that office. The official shall be subject to the provisions of the Statute, Rules and Supplementary Rules governing the loss of office by the Registrar.

Rule 38

Records

(A) The Registrar shall maintain records which shall list all the particulars of each case brought before the Court. The records shall be open to the public.

(B) The Registrar shall also maintain the other records of the Court.

[Note: The issue of whether some records may need to be sealed should be addressed.]

Rule 39

Minutes

Except where a full record is made under rule 98, the Registrar, or Registry staff designated by him, shall take minutes of the plenary meetings of the Court and of the sittings of the Chambers, other than private deliberations.

Rule 40

Victims and Witnesses Unit

(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:

(i) Recommend protective measures for victims and witnesses in accordance with article X (A 43 ILC) of the Statute;

(ii) Provide counselling and support for them, in particular in cases of rape and sexual assault.

(B) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.

[Note: Such a unit might also be located in the Prosecutor's Office. Counselling would obviously be required where persons had suffered violent crimes.]

SECTION 7. THE PROCURACY

Rule 41

Powers and functions of the Prosecutor

(A) The Prosecutor shall exercise the powers and functions conferred upon him or her by the Statute and these Rules.

(B) The Prosecutor shall be responsible for the organization and administration of the Procuracy.

(C) The Prosecutor may put in place such internal procedures as he or she considers necessary to govern the operation of the Procuracy.

(D) His powers under ... of the Rules may be exercised by staff members of the Procuracy authorized by him, or by any person acting under his direction.

[Note: The issue of the delegation of the powers of the Prosecutor needs to be addressed in the Statute.]

Rule 42

Role of a Deputy Prosecutor

(A) A Deputy Prosecutor shall assist the Prosecutor, act as Prosecutor in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Prosecutor until the office has been filled.

(B) If States parties elect more than one Deputy Prosecutor under article X (A 12(3) ILC), the Prosecutor shall establish a mechanism for determining which Deputy Prosecutor is to act as Prosecutor in his or her absence and, in the event of the office becoming vacant, exercise the functions of Prosecutor until the office has been filled by election under article X (A 12(3) ILC) of the Statute.

Rule 43

Acting Prosecutor

(A) If both the Prosecutor and Deputy Prosecutor(s) are unable to carry out the duties of the Prosecutor on a temporary basis, an acting Prosecutor shall discharge those duties for such time as may be necessary. The acting Prosecutor shall be appointed from a list of other lawyers serving as prosecutors on the staff of the Procuracy, which shall be compiled by the Prosecutor. The list shall prescribe the order in which the persons identified therein are to be called upon to serve as acting Prosecutor.

(B) If the offices of Prosecutor and Deputy Prosecutor(s) are vacant at the same time, an acting Prosecutor shall discharge the duties of Prosecutor pending an election to that office under article X (A 12(3) ILC) of the Statute. The acting Prosecutor shall be appointed from the list referred to in subrule (A). He or she shall be subject to the provisions of the Statute governing the loss of office by the Prosecutor.

Rule 44

Solemn undertaking

(A) Upon commencing employment, every staff member of the Procuracy shall make the same undertaking as required of Judges and other offices of the Court under rule 7.

(B) The undertaking, signed by the staff member and witnessed by the Prosecutor or a Deputy Prosecutor, shall be kept in the records of the Court.

Rule 45

Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the Procuracy's investigations.

[Note: A similar obligation needs to be placed on the Registrar.]

Rule 46

Agreements with States

The Prosecutor may enter into agreements with States governing the provision of resources by States to assist in investigations and prosecutions, including the use of national scientific analysis or forensic facilities and the secondment of persons to the staff of the Prosecutor, as provided for in article X (A 31 ILC) of the Statute.

[Note: Where formal agreements need to be concluded between the Court and States parties, the parties should be the Court and the State party concerned.]

PART III

CONDUCT OF JUDGES, COUNSEL AND OTHER PARTICIPANTS

SECTION 1. CONFLICT OF INTEREST

Rule 47

The Judges

(A) In order to assist the application of article X (A 11(2) ILC) of the Statute, the Supplementary Rules shall contain detailed conflict of interest rules.

(B) States parties shall be able to make submissions to the President about the content of these rules.

[Note: The issue of conflict of interest could also be dealt with in the section of the Rules dealing with disqualification. Conflict of interest rules could be elaborated in the Statute. Conflict of interest rules will be particularly important if Judges of the Court are to serve only as required.]

Rule 48

The Procuracy

(A) In order to assist the application of article X (A 12(6) ILC) of the Statute, the Prosecutor shall put in place a set of detailed conflict of interest rules for the staff of the Procuracy.

(B) States parties shall be able to make submissions to the Prosecutor about the content of these rules.

SECTION 2. LOSS OF OFFICE

Rule 49

The Judges

(A) In any case in which the application of article X (A 15 ILC) to a Judge is under consideration, the Judge concerned shall be so informed by the President in a written statement which shall include the grounds therefor and any relevant evidence. He or she shall subsequently, in a closed plenary session of the Court specially convened for the purpose, be afforded full opportunity, in accordance with article X (A 15(4) ILC) of the Statute, to present evidence and make submissions. He or she shall also have full opportunity to supply answers, orally or in writing, to any questions put to him or her.

(B) At a further closed plenary session of the Court specially convened for the purpose, the question of whether the Judge concerned should continue to hold office shall be put to a vote in accordance with article X (A 15(2) ILC) of the Statute. The procedure for conducting the vote shall be laid down in the Supplementary Rules.

Rule 50

The Registrar and Deputy Registrar

(A) In any case in which the application of article X (A 15 ILC) of the Statute to the Registrar or Deputy Registrar is under consideration, the Registrar or Deputy Registrar shall be so informed by the President in a written statement which shall include the grounds therefor and any relevant evidence.

He or she shall subsequently, in a closed plenary session of the Court specially convened for the purpose, be afforded full opportunity, in accordance with article X (A 15(4) ILC) of the Statute, to present evidence and make submissions. He or she shall also have full opportunity to supply answers, orally or in writing, to any questions put to him or her.

(B) At a further closed plenary session of the Court specially convened for the purpose, the question of whether the Registrar or Deputy Registrar should continue to hold office shall be put to a vote in accordance with article X (A 15(2) ILC) of the Statute. The procedure for conducting the vote shall be laid down in the Supplementary Rules.

SECTION 3. CONTEMPT OF COURT, MISCONDUCT AND PERJURY

[As is the case with national courts, the Court must have the power to deal with contempt and perjury. The Statute should address the point with necessary elaboration to be undertaken in the Rules. Following for information is rule 77 of the Rules of the Tribunal for the former Yugoslavia dealing with contempt:

Rule 77

Contempt of the Tribunal

(A) Subject to the provisions of subrule 90(E), a witness who refuses or fails contumaciously to answer a question relevant to the issue before a Chamber may be found in contempt of the Tribunal. The Chamber may impose a fine not exceeding US$ 10,000 or a term of imprisonment not exceeding six months.

(B) The Chamber may, however, relieve the witness of the duty to answer, for reasons which it deems appropriate.

(C) Any person who attempts to interfere with or intimidate a witness may be found guilty of contempt and sentenced in accordance with subrule (A).

(D) Any judgement rendered under this Rule shall be subject to appeal.

(E) Payment of a fine shall be made to the Registrar to be held in a separate account.]

[The Court will also need the power to deal with the misconduct of counsel. The matter could be Following for information is rule 46 of the Rules of the Tribunal for the former Yugoslavia dealing with this matter:

Rule 46

Misconduct of Counsel

(A) A Chamber may, after a warning, refuse audience to counsel if, in its opinion, his conduct is offensive, abusive or otherwise obstructs the proper conduct of the proceedings.

(B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of his University.]

[The Court must also be able to deal with perjury. Article 44(2) of the ILC draft Statute currently provides for the States parties to extend their laws of perjury to cover evidence given by their nationals. This provision has been criticized and it has been proposed that the Statute deal with the issue of perjury. One of the shortcomings of article 44(2) is that it would not cover the situation where the national of a non-State party was giving evidence. Following for information is rule 91 of the Rules of the Tribunal for the former Yugoslavia:

Rule 91

False testimony under Solemn Declaration

(A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

(B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

(C) The rules of procedure and evidence in Parts Four to Eight shall apply mutatis mutandis to proceedings under this Rule.

(D) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.

(E) The maximum penalty for false testimony under solemn declaration shall be a fine of US$ 10,000 or a term of imprisonment of twelve months, or both. The payment of any fine imposed shall be made to the Registrar to be held in the account referred to in subrule 77(E).]

[Note: An alternative view on dealing with contempt and perjury is that States should punish their nationals for committing contempt and perjury when appearing as witnesses before the Court.]

PART IV

APPOINTMENT, ASSIGNMENT AND QUALIFICATIONS OF DEFENCE COUNSEL

Rule 51

Appointment and qualifications of counsel

(A) Counsel engaged by a suspect or an accused shall file his or her power of attorney with the Registrar at the earliest opportunity.

(B) A counsel shall be considered qualified to represent a suspect or accused if he or she satisfies the Registrar that he or she is admitted to the practice of law in a State.

Rule 52

Assignment of counsel

(A) A list of counsel who speak one or both of the working languages of the Court, meet the requirements of subrule 51(B) and have indicated their willingness to be assigned by the Court to indigent suspects or accused, shall be kept by the Registrar.

(B) The criteria for determination of indigency shall be established by the Registrar and approved by the Judges.

(C) In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:

(i) A request for assignment of counsel shall be made to the Registrar;

(ii) The Registrar shall inquire into the means of the suspect or accused and determine whether the criteria of indigency are met;

(iii) If he or she decides that the criteria are met, he or she shall assign counsel from the list; if he or she decides to the contrary, he or she shall inform the suspect or accused that the request is refused.

(D) The suspect or accused may seek from the Presidency a review of a decision to refuse a request. The decision of the Presidency shall be final. The procedure governing review by the Presidency shall be laid down in the Supplementary Rules.

(E) If a request is refused, a further request may be made by a suspect or an accused to the Registrar upon showing a change in circumstances.

(F) The Registrar shall, in consultation with the Judges, establish the criteria for the payment of fees to assigned counsel.

(G) If a suspect or an accused elects to conduct his own defence, he or she shall so notify the Registrar in writing at the first opportunity.

(H) Where an alleged indigent person is subsequently found not to be indigent, the Trial or Appeals Chamber may make an order of contribution to recover the cost of providing counsel for proceedings before that Chamber.

[Note: These Rules raise a number of important issues. One issue relates to whether the accused should be allowed to represent himself or herself. Given the very serious nature of the crimes that will be within the Court's jurisdiction, it may be appropriate for the Court to appoint counsel for an accused even though he or she wishes to represent themselves. This view, however, needs to be contrasted with article 14.3(d) of the International Covenant on Civil and Political Rights which provides that an accused person has the right "to defend himself in person or through legal assistance of his own choosing". Another issue relates to the list of counsel who would be prepared to appear for indigent accused. There may be an argument for the accused to be offered the choice of a limited number of lawyers from different legal traditions and cultures. A further issue relates to whether stricter requirements relating to qualifications should be applied to lawyers appointed by the Court as opposed to those retained directly by accused persons.]

PART V

COMPLAINT BY STATE PARTY

Rule 53

Form of complaint

A complaint by a State party under article X (A 25 ILC) of the Statute shall be lodged in writing with the Prosecutor.

Rule 54

Content of complaint

(A) The complaint shall provide as much information as possible to assist the Prosecutor in deciding whether an investigation should be initiated, including:

(i) The basis of jurisdiction relied upon in making the complaint;

(ii) The circumstances of the alleged crime;

(iii) The identity and whereabouts of any suspects, if known;

(iv) The identity and whereabouts of any witnesses, if known;

(v) The location of evidence;

(vi) Details of any investigation carried out by the complaining State party or, to its knowledge, any other State.

(B) The Prosecutor may seek clarification of any matter contained in the complaint or further information from the complainant State party.

PART VI

INVESTIGATIONS AND RIGHTS OF SUSPECTS

SECTION 1. ORDERS, SUBPOENAS AND WARRANTS

Rule 55

Prosecutor's power to seek orders, subpoenas and warrants

The Prosecutor may apply to the Presidency for the following orders, subpoenas and warrants in the course of his or her investigation:

[list to be inserted]

Rule 56

Suspect to be permitted to seek orders and subpoenas

A suspect may apply to the Presidency for the following orders and subpoenas:

[list to be inserted]

SECTION 2. RIGHTS OF SUSPECTS

Rule 57

Duty of Prosecutor

The Prosecutor shall fully respect the rights of suspects under the Statute and Rules.

[Note: The issue of the rights of a suspect under national law and the duty of the Prosecutor in relation to those rights will need to be addressed in the Statute. The sanction to be applied in response to non-compliance with these rights also needs to be considered.]

Rule 58

Presence of counsel during questioning

Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his or her right to counsel. In case of waiver, if the suspect subsequently expresses the desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

[Note: Further to the note in relation to rule 52, the issue of whether the accused should be able to waive the right to counsel should be addressed.]

Rule 59

Recording questioning of suspects

Whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) The suspect shall be informed in a language he or she speaks and understands that the questioning is being audio-recorded or video-recorded;

(ii) In the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;

(iii) At the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he or she has said, and to add anything he or she may wish, and the time of conclusion shall be recorded;

(iv) The tape shall then be transcribed as soon as practicable after the conclusion of questioning and a copy of the transcript supplied to the suspect, together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(v) After a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

PART VII

INDICTMENT, ARREST, DETENTION AND BAIL

SECTION 1. INDICTMENTS

Rule 60

Submission of indictment by the Prosecutor

(A) If in the course of an investigation the Prosecutor is satisfied that there is a prima facie case that a suspect has committed a crime within the jurisdiction of the Court, he or she shall prepare in writing and forward to the Registrar under article X (A 27(1) ILC) an indictment for confirmation by the Presidency, together with supporting material.

(B) The indictment shall set forth the name and particulars of the suspect, a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

(C) The indictment shall also contain a statement regarding the basis for the Court to exercise jurisdiction.

(D) The supporting material referred to in subrule (A) shall include the evidence gathered by the Prosecutor.

(E) The Registrar shall forward the indictment and supporting material to the Presidency, which will inform the Prosecutor of the date fixed for review of the indictment.

[Note: Various issues arise in relation to the submission and confirmation of indictments. Should the Prosecutor have the discretion not to submit an indictment for confirmation? Should the Presidency be responsible for the confirmation of indictments and if not should a Chamber be established for this purpose? Should the person who is the subject of the indictment have standing in the confirmation proceeding?]

Rule 61

Review of indictment

(A) On reviewing the indictment, the Presidency shall hear the Prosecutor, who may present additional material in support of any count. The Presidency may also require the Prosecutor to present additional material in support of any count. The proceedings may be adjourned to allow additional material to be produced.

(B) The Presidency shall determine in relation to each count whether a prima facie case exists with respect to a crime within the Court's jurisdiction and dismiss those counts where such a case does not exist.

(C) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing a new indictment based on the acts underlying that count if supported by additional evidence.

(D) If a prima facie case is found to exist in relation to one or more counts in the indictment, the Presidency shall determine whether, having regard, inter alia, to the matters referred to in article X (A 35 ILC) of the Statute, the case should on the information available be heard by the Court.

(E) If the Presidency determines the case should be heard by the Court, it shall confirm the indictment and establish a Trial Chamber.

Rule 62

Joinder of accused

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

Rule 63

Joinder of crimes

Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

Rule 64

Severance

In the event of multiple charges, joinder of indictments or joinder of accused, the Trial Chamber may, in the interests of justice, grant a request for severance by an accused.

Rule 65

Amendment of indictment

The Prosecutor may amend an indictment, without leave, at any time before it is confirmed in the review proceedings under article X (A 27 ILC) of the Statute, but thereafter only with leave of the Presidency or, if at trial, with leave of the Trial Chamber. If leave to amend is granted, the amended indictment shall be transmitted to the accused and to his or her counsel and where necessary the date for trial shall be postponed to ensure adequate time for the preparation of the defence.

[Note: The amendment of indictments raises a number of issues. Should the Prosecutor be allowed to seek amendment by the Trial Chamber? What should the criteria be for permitting amendment?]

Rule 66

Withdrawal of indictment

(A) The Prosecutor may withdraw an indictment or one or more counts thereof, without leave, at any time before it is confirmed in the review proceedings under article X (A 27 ILC) of the Statute, but thereafter only with leave of the Presidency or, if at trial, only with leave of the Trial Chamber.

(B) The withdrawal of the indictment or one or more counts thereof shall be promptly notified to the accused and to his or her counsel.

Rule 67

Public character of indictment

Subject to rule 68, upon the decision of the Presidency to confirm an indictment and establish a Trial Chamber under article X (A 27 ILC) of the Statute, the indictment shall be made public.

Rule 68

Non-disclosure of indictment

(A) The Presidency may, at the request of the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused. In exercising its discretion, the Presidency shall take account of all relevant factors, including the potential for pre-arrest flight of an accused, destruction of evidence and harm to victims or witnesses if the indictment is made public.

(B) The Presidency may, at the request of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

SECTION 2. ARREST, DETENTION AND BAIL

Rule 69

Execution of arrest warrants following confirmation of indictment

(A) A warrant of arrest issued pursuant to article X (A 28(3) ILC) of the Statute shall be signed by the Presidency or the Judge (or Trial Chamber) who has dealt with the matter pursuant to a delegation under article X (A 8(5) ILC) of the Statute and shall bear the seal of the Court. It shall be accompanied by a copy of the indictment, and a statement of the rights of the accused under the Statute and Rules.

(B) A warrant for the arrest of the accused and an order for his surrender to the Court shall be transmitted by the Registrar to the national authorities of the State in whose territory or under whose jurisdiction or control the accused resides, or was last known to be, together with instructions that at the time of arrest the indictment and the statement of the rights of the accused be read to him or her in a language he or she understands and that he or she be cautioned in that language.

(C) When an arrest warrant issued by the Court is executed, a member of the Prosecutor's Office may be present as from the time of arrest with the agreement of the State concerned.

[Note: If provisional arrest as contemplated in A 28(1) of the ILC Statute is retained, a similar rule to this one will need to be elaborated in part VI, Investigation and rights of suspects.]

Rule 70

Procedure after arrest

Upon the arrest of the accused, the State concerned shall detain him, and shall promptly notify the Registrar.

[Note: The remainder of this Rule would be elaborated as required depending on the approach taken on the articles of the Statute dealing with pre-trial detention and release of an accused (see A 29 ILC). Relevant issues would include the balance to be struck between the roles of the national judicial authorities and the Court on matters such as bail.]

Rule 71

Failure to execute an arrest warrant

Where the State to which a warrant of arrest has been transmitted declines to execute the warrant, is unable to execute it or experiences a delay in execution, it shall report this forthwith to the Registrar, and the reasons therefor.

[Note: A distinction in relation to this Rule would need to be drawn between States parties and non-States parties.]

Rule 72

Advertisement of indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States in whose territory the Prosecutor has reason to believe that the accused may be found, for publication in newspapers having wide circulation in that territory, intimating to the accused that service of an indictment against him or her is sought.

[Note: The mandatory nature of this Rule could be subject to further consideration.]

Rule 73

Establishment of Indictment Chamber under article X (A 37(4) ILC) of the Statute

[The elaboration of this Rule (and related rules) will need to be undertaken in light of the approach taken on the issue of the Indictment Chamber in article 37 of the ILC Statute. Presented below for information is rule 61 of the Rules of the Tribunal for the former Yugoslavia:

Rule 61

Procedure in Case of Failure to Execute a Warrant

(A) If a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, and the Prosecutor satisfies the Judge who confirmed the indictment that:

(i) He has taken all reasonable steps to effect personal service, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to him to be;

(ii) He has otherwise tried to inform the accused of the existence of the indictment by seeking publication of newspaper advertisements pursuant to rule 60, the Judge shall order that the indictment be submitted by the Prosecutor to his Trial Chamber.

(B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge.

(C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in subrule (A) above.

(D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States.

(E) If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify, in which event the President shall notify the Security Council.]

PART VIII

TRANSFER AND ASSISTANCE

SECTION 1. TRANSFER

SECTION 2. ASSISTANCE

[Note: Rules under this part can be elaborated when the approach to be taken on the Articles of the Statute relating to transfer and assistance in investigations and prosecutions is settled.]

PART IX

PRE-TRIAL PROCEEDINGS

SECTION 1. RIGHTS OF THE ACCUSED

Rule 74

Initial appearance of accused

Upon his or her transfer to the seat of the Court or where the Trial is to be held, the accused shall be brought before the Trial Chamber established by the Presidency under article X (A 27 ILC) of the Statute without delay, and shall be formally charged. The Trial Chamber shall:

(i) Satisfy itself that the right of the accused to counsel is respected;

(ii) Read or have the indictment read to the accused in a language he or she speaks and understands, and satisfy itself that the accused understands the indictment;

(iii) Call upon the accused to enter a plea of guilty or not guilty on each count; and should the accused fail to do so, enter a plea of guilty on his or her behalf;

(iv) In the case of a plea of not guilty, instruct the Registrar to set a date for trial;

(v) In the case of a plea of guilty, instruct the Registrar to set a date for the pre-sentencing hearing under rule 118;

(vi) Instruct the Registrar to set such other dates as appropriate.

[Note: A number of issues are raised by this Rule which flow from the different approaches taken under the common law and civil law systems. For example, civil law systems do not make provision for guilty pleas. The proposal that a guilty plea would lead directly to a pre-sentencing hearing would also raise concerns from the perspective of a civil law system.]

Rule 75

Questioning of accused

After the initial appearance of the accused the Prosecutor shall not question him or her unless his or her counsel is present and the questioning is tape-recorded or video-recorded in accordance with the procedure provided for in rules 58 and 59. The Prosecutor shall at the beginning of the questioning caution the accused that he or she is not obliged to say anything unless he or she wishes to do so but that whatever he or she says may be given in evidence.

Rule 76

Detention on remand

Upon his or her transfer to the seat of the Court, the accused shall be detained in facilities provided by the host country, or by another country. The Presidency may under article X (A 29 ILC) of the Statute, on the application of a party, modify the conditions of detention of an accused.

[Note: There is a question as to whether the Trial Chamber should carry out this function instead. There is also the issue of whether the host State should have standing in relation to detention decisions.]

Rule 77

Provisional release

(A) Once detained, an accused may not be released except upon an order of the Presidency.

(B) Release may be ordered by the Presidency only in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Presidency may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure his or her presence for trial and the protection of others.

(D) If necessary, the Presidency may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty.

[Note: Should the Trial Chamber carry out this function instead?]

SECTION 2. PRE-TRIAL MOTIONS

Rule 78

General provisions

(A) After the initial appearance of the accused, either party may move before the Trial Chamber for appropriate relief or ruling. Such motions may be written or oral, at the discretion of the Trial Chamber.

(B) The Trial Chamber shall dispose of preliminary motions in limine litis and without interlocutory appeal, save in the following cases wherein the Chamber:

(i) Dismisses an objection by the accused based on lack of jurisdiction;

(ii) Dismisses all or part of an indictment which prohibits the Prosecutor from bringing new charges based on the acts underlying the dismissed indictment, or portion thereof;

(iii) Excludes evidence and the Prosecutor represents to the Trial Chamber that the appeal is not taken for the purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

(C) The Supplementary Rules shall provide for matters such as the length, format and manner of service of preliminary motions where those motions are in written form.

Rule 79

Preliminary motions by accused

(A) Preliminary motions open to the accused shall include:

(i) Objections based on lack of jurisdiction;

(ii) Objections based on defects in the form of the indictment;

(iii) Applications for the exclusion of evidence obtained from the accused or having belonged to him or her;

(iv) Applications for severance under rule 64;

(v) Objections based on the denial of request for assignment of counsel.

(B) Any of the motions by the accused referred to in subrule (A) shall be brought within sixty days after his or her initial appearance, and in any case before the hearing on the merits.

(C) Failure to apply within the time-limit prescribed shall constitute a waiver of the right. Upon a showing of good cause, the Trial Chamber may grant relief from the waiver.

[Note: Subrules (B) and (C) conflict with article 34 of the ILC draft Statute.]

Rule 80

Opportunity to respond

Upon the submission of a motion, the other party shall be afforded a reasonable opportunity to respond to it. The Supplementary Rules may set time-limits for responses.

Rule 81

Ruling on motions

Motions shall be decided as expeditiously as possible. A motion may be summarily denied on the grounds that insufficient allegations of fact or law have been set forth to justify further inquiry by the Trial Chamber.

SECTION 3. MOTIONS REGARDING THE EXERCISE OF THE COURT'S JURISDICTION

[Note: Rules will need to be elaborated on the issue of motions regarding the exercise of the Court's jurisdiction. This task can be completed when the approach to be taken in relation to the relevant Articles of the Statute is settled.]

SECTION 4. DISCLOSURE OF EVIDENCE

Rule 82

Disclosure by the Prosecutor

(A) The Prosecutor shall make available to the defence, as soon as practicable after the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused or from prosecution witnesses.

(B) The Prosecutor shall on request, subject to subrule (C), permit the defence to inspect any books, documents, photographs and tangible objects in his or her custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

(C) Where information is in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting in camera to be relieved from the obligation to disclose pursuant to subrule (B). When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential.

(D) Information subject to an order of the Trial Chamber pursuant to subrule (C) must be subsequently disclosed if it is intended to be used as evidence at trial.

[Note: The requirement of disclosure throws up a number of important issues. One relates to the need to ensure that the rights of the accused are not prejudiced through limiting the duty on the Prosecutor to disclose information.

There is also the matter of protecting sensitive information supplied by States to the Prosecutor. In this regard, should the relevant State have standing to argue for the non-disclosure of information it has supplied to the Prosecutor? It should be noted that the approach taken in this Rule conflicts with aspects of article 27(5) of the ILC draft Statute.]

Rule 83

Reciprocal disclosure

(A) As early as reasonably practicable and in any event prior to the commencement of the trial:

(i) The Prosecutor shall notify the defence of the names of the witnesses that he or she intends to call in proof of the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with (ii) below;

(ii) The defence shall notify the Prosecutor of its intent to offer:

(a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

(b) Any special defence, including those of (defences to be identified); in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.

(B) Failure of the defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.

(C) If the defence makes a request pursuant to subrule (B) of rule 82, the Prosecutor shall be entitled to inspect any books, documents, photographs and tangible objects, which are within the custody or control of the defence and which it intends to use as evidence at the trial.

Rule 84

Disclosure of exculpatory evidence

(A) The Prosecutor shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

(B) The Prosecutor may request an ex parte hearing in camera before the Trial Chamber for the purpose of obtaining a ruling on whether or not particular evidence falls within the category of exculpatory evidence.

Rule 85

Continuing duty to disclose

(A) The duty to disclose is ongoing for both parties.

(B) If either party discovers additional evidence or material which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or material.

[Note: The issue of sanctions for non-disclosure needs to be addressed.]

Rule 86

Protection of victims and witnesses

(A) In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.

(B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Unit.

(C) Subject to rule 95, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

[Note: The protection of victims and witnesses will be an important responsibility of the Court. The non-disclosure of the identity of victims and witnesses needs to be balanced against the right of an accused to prepare his or her defence.]

Rule 87

Matters not subject to disclosure

(A) Notwithstanding the provisions of rules 82 and 83 reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

(B) If the Prosecutor is in possession of information which has been provided to him or her on a confidential basis and which has been used solely

for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding rule 116, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance.

(D) If the Prosecutor calls as a witness the person providing, or a representative of the entity providing, information under this Rule, the Trial Chamber may not compel the witness to answer any question the witness declines to answer on grounds of confidentiality.

(E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to limitations contained in subrules (C) and (D).

(F) Nothing in subrule (C) or (D) above shall effect a Trial Chamber's power under subrule 105(D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

SECTION 5. EVIDENCE GATHERING PROCEEDINGS

Rule 88

Proceedings before the Indictment Chamber

[Note: See comments above under rule 73.]

Rule 89

Depositions

[Note: The issue of depositions needs to be addressed in connection with part VIII, Transfer and assistance.]

PART X

TRIAL PROCEEDINGS

SECTION 1. GENERAL PROVISIONS

Rule 90

Open sessions

(A) All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

(B) Photography, video recording or audio recording of the trial, other than by the Registry under rule 98 is within the discretion of the Trial Chamber.

(C) In order to protect the accused's right to a fair trial or maintain the dignity and decorum of proceedings, the Trial Chamber may limit the number of spectators in, exclude specific persons from, or restrict access to the courtroom.

[Note: Questions arising under this Rule include whether the Trial Chamber should have the power to order a closed hearing and whether photography, video recording or audio recording of the trial, other than by the Registry under rule 98, should be permitted.]

Rule 91

Closed sessions

(A) As provided for in article X (A 38(4) ILC) of the Statute, the Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

(i) Public order or morality;

(ii) Safety, security or non-disclosure of the identity of a victim or witness as provided in rule 95;

(iii) The protection of the interests of justice.

(B) The Trial Chamber shall make public the reasons for its order.

[Note: This Rule is wider in some respects than article 38(4) of the ILC draft Statute.]

Rule 92

Joint trials

In joint trials, each accused shall be accorded the same rights as if he or she were being tried separately.

Rule 93

Presence of the accused

(A) As provided for in article X (A 37 ILC) of the Statute, the accused should be present during the trial.

(B) The Trial Chamber may, proprio motu or at the request of either party, order that the trial proceed in the absence of the accused when the requirements of article X (A 37(2), (3) ILC) of the Statute are satisfied. In making such an order, the Trial Chamber shall ensure that the rights of the accused under the Statute and Rules are respected.

[Note: This Rule needs to be further elaborated in light of discussion on article 37 of the ILC draft Statute.]

Rule 94

Instruments of restraint

Instruments of restraint, such as handcuffs, shall not be used except as a precaution against escape during transfer or for security reasons, and shall be removed when the accused appears before a Trial Chamber.

Rule 95

Measures for the protection of victims and witnesses

(A) As provided for in article X (A 38(4), 43 ILC) of the Statute, a Trial Chamber may, proprio motu or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused as provided for in the Statute and the Rules, in particular the right to examine, or have examined, prosecution witnesses.

(B) A Trial Chamber may hold an in camera proceeding to determine whether to order:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him or her by such means as:

(a) Expunging names and identifying information from the Chamber's public records;

(b) Non-disclosure to the public of any records identifying the victim;

(c) Giving of testimony through image or voice altering devices or closed circuit television;

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with rule 91;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.

(C) A Trial Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

[Note: The power of the Trial Chamber to issue a protective order to ensure the safety and security of a particular victim or witness needs to be considered.]

Rule 96

Amicus curiae

A Trial Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 97

Solemn undertaking by interpreters and translators

Before performing any duties, an interpreter or a translator shall solemnly undertake to do so faithfully, independently, impartially and with respect for the duty of confidentiality.

Rule 98

Records of proceedings and evidence

(A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.

(B) The Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.

(C) The Registrar shall retain and preserve all physical evidence offered during the proceedings.

SECTION 2. CASE PRESENTATION

[Note: The subject of case presentation is one area of procedure which highlights the different approaches taken by national legal systems. For example, civil law systems, unlike common law systems, accord Judges the power to question witnesses. A balance will need to be struck drawing on the approaches of different legal traditions.]

Rule 99

Opening statements

Before presentation of evidence by the Prosecutor, each party may make an opening statement. The defence may however elect to make its statement after the Prosecutor has concluded his presentation of evidence and before the presentation of evidence for the defence.

Rule 100

Presentation of evidence

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

(i) Evidence for the prosecution;

(ii) Evidence for the defence;

(iii) Prosecution evidence in rebuttal;

(iv) Defence evidence in rejoinder;

(v) Evidence ordered by the Trial Chamber pursuant to rule 116.

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him or her in chief, but a Judge may at any stage put any question to the witness.

(C) The accused may, if he or she so desires, appear as a witness in his or her own defence.

Rule 101

Postponements

The Trial Chamber shall have the power to order a postponement of proceedings, proprio motu or on the application of either party, on the following grounds:

[Grounds to be listed]

Rule 102

Closing arguments

After the presentation of all the evidence, the Prosecutor may present an initial argument, to which the defence may reply. The Prosecutor may, if he or she wishes, present a rebuttal argument, to which the defence may present a rejoinder.

Rule 103

Deliberations

(A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private.

(B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under rule 62, separate findings shall be made as to each accused.

Rule 104

Judgement

As provided for in article X (A 45(5) ILC) of the Statute, the judgement shall be delivered in open court, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

[Note: This Rule will need to reflect the range of penalties which can be imposed by the Court.]

SECTION 3. RULES OF EVIDENCE

[Note: Rules of evidence is another area in which a balance will need to be struck drawing on the approaches of different legal traditions.]

Rule 105

General provisions

(A) The rules of evidence set forth in this section together with article X (A 44 ILC) of the Statute shall govern the proceedings before the Trial Chambers. The Chambers shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this section, a Trial Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Trial Chamber may admit any relevant evidence which it deems to have probative value. Irrelevant evidence shall not be admitted.

(D) A Trial Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

(E) A Trial Chamber may request verification of the authenticity of evidence obtained out of court.

(F) The Trial Chamber shall place on the record its reasons for excluding relevant evidence.

Rule 106

Testimony of witnesses

(A) Witnesses shall, in principle, be heard directly by the Chambers unless a Chamber has ordered that the witness be heard by means of a deposition. [see note on section 5 of part IX]

(B) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

(C) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that he or she is sufficiently mature to be able to report the facts of which he or she had knowledge and that he or she understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.

(D) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.

(E) A witness may object to making any statement which might tend to incriminate him or her. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than perjury.

[Note: There is a need to list fully the grounds on which a witness could refuse to give evidence, for example, where a witness is the spouse of an accused.]

Rule 107

Transfer of a detained witness

[Note: This matter will need to be addressed in connection with part VIII, Transfer and assistance.]

Rule 108

Confessions

(A) A confession or admission by the accused given during questioning by the Prosecutor shall, provided the relevant requirements of the Statute and Rules were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

(B) A confession or admission by a suspect given during questioning by the Prosecutor shall, provided the relevant requirements of the Statute and Rules were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

(C) A confession or admission by a suspect given during questioning by national authorities shall, provided the relevant requirements of the Statute and the Rules were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

(D) A confession is an out-of-court acknowledgment of guilt of any element of an offence of any out-of-court self-incriminating statement made by an individual. An admission is any other statement made by an individual with respect to his or her participation or participation in an offence.

Rule 109

Evidence of consistent pattern of conduct

(A) Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice.

(B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the defence pursuant to rule 82.

Rule 110

Judicial notice

A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

Rule 111

Agreements by the parties regarding facts in issue

(A) The parties may make oral or written agreements that a fact in issue should be considered proven without the need for evidence to be produced.

(B) The Trial Chamber may, in the interest of justice, decline to accept an agreement under subrule (A).

Rule 112

Evidence obtained by means contrary to internationally protected human rights

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

[Note: There is a question of how evidence obtained by national authorities should be treated. Should the Court act on the presumption that such evidence has been obtained in accordance with national laws and safeguards? The Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders deal in part with the role of the prosecutor in criminal proceedings. Guideline 16 dealing with evidence obtained by unlawful methods may be relevant on this point.]

Rule 113

Evidence in cases of sexual assault

In cases of sexual assault:

(i) No corroboration of the victim's testimony shall be required;

(ii) Consent shall not be allowed as a defence if the victim

(a) Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or

(b) Reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(iii) Before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;

(iv) Prior sexual conduct of the victim shall not be admitted in evidence.

[Note: Should there be an absolute prohibition on prior sexual conduct of a victim being admitted in evidence?]

Rule 114

Joint trials

In joint trials, evidence which is admissible against only some of the joint or several accused may be considered only against the accused concerned.

Rule 115

Lawyer-client privilege

All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless:

(i) The client consents to such disclosure; or

(ii) The client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

Rule 116

Power of Trial Chambers to order production of additional evidence

A Trial Chamber may order either party to produce additional evidence. It may itself summon witnesses and order their attendance.

SECTION 4. SENTENCING PROCEDURE

Rule 117

Status of acquitted person

(A) In case of acquittal, the accused shall be released immediately.

(B) If, at the time the Judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of his or her intention to file notice of appeal, the Trial Chamber may, at the request of the Prosecutor, issue a warrant for the arrest of the acquitted person to take effect immediately.

(C) The Trial Chamber shall not issue an arrest warrant unless it is satisfied that the acquitted person may not be readily returned to custody if the Judgement is reversed.

[Note: There could be concerns about providing for the arrest of an acquitted person in these circumstances.]

Rule 118

Pre-sentencing procedure

(A) If a Trial Chamber finds the accused guilty of a crime, it shall as required by article X (A 46(1) ILC) of the Statute hold a pre-sentencing hearing at which the parties may make submissions that may assist the Trial Chamber in determining an appropriate sentence. These submissions may go to aggravation, extenuation or mitigation evidence, or the issue of rehabilitation.

(B) At such a hearing the parties shall ordinarily present submissions in the following manner:

(i) Presentation by the Prosecutor;

(ii) Presentation by the defence;

(iii) Prosecution rebuttal;

(iv) Defence surrebuttal;

(v) Argument by the Prosecutor on sentence;

(vi) Argument by the defence on sentence.

Rule 119

Penalties

(A) The Trial Chamber may impose the penalties provided for in article X (A 47 ILC) of the Statute.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in article X (A 46(2) ILC) of the Statute, as well as factors such as:

(i) Any aggravating circumstances, including:

(a) The impact of the crime on the victims;

(b) The extent of damage caused by the convicted person's conduct;

(ii) Any mitigating circumstances, including:

The substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The time which the convicted person has already been detained for on the charges;

(iv) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in article X (A 42(3) ILC) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) The sentence shall be pronounced in public and in the presence of the convicted person, subject to subrule 120(B).

Rule 120

Status of convicted person

(A) The sentence shall begin to run from the day it is pronounced under subrule 119(D). However, as soon as notice of appeal is given, the enforcement of the Judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention.

(B) If, by a previous decision of the Trial Chamber, the convicted person has been released, or is for any other reason at liberty, and he or she is not

present when the Judgement is pronounced, the Trial Chamber shall issue a warrant for his or her arrest.

Rule 121

Transfer of convicted person to place of imprisonment

(A) Transfer of the convicted person to his or her place of imprisonment shall be effected as soon as possible after the time-limit for appeal has elapsed.

(B) The Registrar shall make all necessary arrangements with the State in which the convicted person is to be imprisoned pursuant to article X (A 59(1) ILC) of the Statute or with the host State pursuant to article X (A 59(2) ILC) of the Statute to effect the transfer.

Rule 122

Supervision of imprisonment

As provided for in article X (A 59(3) ILC) of the Statute, all sentences of imprisonment shall be supervised by the Court. The Registrar shall be the channel for communication between the Court and the State of imprisonment to assist the Court in discharging its responsibility.

Rule 123

Pardon, parole and commutation of sentence

[Note: This Rule will need to be elaborated in light of the approach taken to the relevant article (A 60 ILC) of the Statute.]

[For information, presented below is rule 125 of the Rules of the Tribunal for the former Yugoslavia:

Rule 125

General standards for granting pardon or commutation

In determining whether pardon or commutation is appropriate, the President shall take into account, inter alia, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.]

Rule 124

Restitution of property/forfeiture of the proceeds of crime

[Note: If the Statute provides for restitution of property and/or forfeiture of the proceeds of crime, the Rules may need to elaborate the mechanism for this to occur.]

[For information, presented below is rule 105 of the Rules of the Tribunal for the former Yugoslavia:

Rule 105

Restitution of property

(A) After a judgment of conviction containing a specific finding as provided in subrule 88(B), the Trial Chamber shall, at the request of the Prosecutor, or may, at its own initiative, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.

(B) The determination may extend to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.

(C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.

(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

(E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.

(F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

(G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to subrules (C), (D), (E) and (F).]

Rule 125

Compensation of victims

[Note: If the Statute provides for compensation of victims, the Rules may need to elaborate the mechanism for this to occur.]

[For information, presented below is rule 106 of the Rules of the Tribunal for the former Yugoslavia:

Rule 106

Compensation to victims

(A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.

(B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.

(C) For the purposes of a claim made under subrule (B) the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.]

PART XI

APPELLATE PROCEEDINGS

Rule 126

General provision

The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply mutatis mutandis to proceedings in the Appeals Chamber.

Rule 127

Notice of appeal under article X (A 48 ILC) of the Statute

(A) Subject to subrule (B), a party seeking to appeal under article X (A 48 ILC) of the Statute a judgement or sentence shall, not more than thirty days from the date on which the judgement or sentence was pronounced, file with the Registrar and serve upon the other party a written notice of appeal, setting forth the grounds. The Supplementary Rules shall provide for the form and any related requirements of a notice of appeal.

(B) The Appeals Chamber may extend the period up to an additional thirty days for good cause.

(C) If a notice of appeal is not filed within the required time-limit, or if a properly filed appeal is discontinued in all respects, the judgement or sentence shall be deemed to be final and subject only to revision pursuant to article X (A 50 ILC) of the Statute.

Rule 128

Interlocutory appeals

(A) Subject to subrule (B), a party seeking to make an interlocutory appeal as permitted by subrule 78(B) shall not more than ten days from the date on which the Trial Chamber ruled on the preliminary motion, file with the Registrar and serve upon the other party a written notice of interlocutory appeal, setting forth the grounds. The Supplementary Rules shall provide for the form and any related requirements of an interlocutory notice of appeal.

(B) The Appeals Chamber may extend the period up to an additional five days for good cause.

[Note: This Rule needs further elaboration. The matter might also need to be addressed in the Statute.]

Rule 129

Appeals by both parties

Where both parties file a notice of appeal under rule 127, the party lodging the earliest notice shall be deemed to be the Appellant and, accordingly, the other party shall be deemed to be the Respondent.

Rule 130

Discontinuance of appeal

An Appellant, including the party deemed to be the Respondent under rule 129, may at any time file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other party that the notice has been filed. Upon filing of the notice, the appeal shall be abandoned.

Rule 131

Record on appeal

The record on appeal shall consist of the trial record, as certified by the Trial Chamber.

[Note: There may be grounds for limiting the record on appeal to that part of the trial record going to the matters in dispute.]

Rule 132

Copies of record

The Registrar shall make a sufficient number of copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the parties.

Rule 133

Appellant's brief

(A) An Appellant's brief of argument and authorities shall be served on the other party and filed with the Registrar within thirty days of the date of the filing of the notice of appeal under rule 127. The Appeals Chamber may for good cause extend the period up to an additional ten days.

(B) The Appellant's brief shall satisfy the requirements as to the form, content and length of briefs laid down in the Supplementary Rules.

Rule 134

Respondent's brief

(A) A Respondent's brief of argument and authorities shall be served on the other party and filed with the Registrar within thirty days of the filing of the Appellant's brief under subrule 133(A). The Appeals Chamber may extend the period up to an additional ten days for good cause.

(B) The Respondent's brief shall satisfy the requirements as to the form, content and length of briefs laid down in the Supplementary Rules.

Rule 135

Brief in reply

An Appellant may file a brief in reply within ten days after the filing of the Respondent's brief under subrule 134(A). The Appeals Chamber may extend the period up to an additional five days for good cause.

Rule 136

Requirement for brief where Appellant or Respondent is not represented by counsel

Where the Appellant or Respondent is not represented by counsel, the Appeals Chamber may order that he or she need not file a brief as required by rule 133 or rule 134, or may file a brief in a modified form.

Rule 137

Briefs submitted on behalf of interested persons or organizations

(A) A brief submitted on behalf of an interested person may be filed only by invitation of the Appeals Chamber or by motion for leave to file granted by the Appeals Chamber.

(B) A brief submitted under subrule (A) shall be filed with the Registrar who shall provide copies to the Appellant and Respondent.

(C) The Appeals Chamber shall determine what time-limits should govern the filing of such briefs.

(D) The Supplementary Rules shall specify the requirements as to the form, content and length of such briefs.

Rule 138

Date of hearing

After the expiry of the time-limits for filing the briefs provided for in rules 133, 134 and 135, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties.

Rule 139

Conduct of hearing

The Supplementary Rules shall govern the conduct of the hearing.

Rule 140

Additional evidence

(A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion

must be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing.

(B) The Appeals Chamber shall authorize the presentation of such evidence if it considers that the interests of justice so require.

Rule 141

Expedited appeals procedure

(A) An interlocutory appeal shall be heard expeditiously on the basis of the original record of the Trial Chamber and without the necessity of any written brief.

(B) All delays and other procedural requirements shall be fixed by an order of the President issued on an application by one of the parties, or proprio motu should no such application have been made within fifteen days after the filing of the notice of interlocutory appeal under rule 128.

Rule 142

Judgement on appeal

(A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such additional evidence as it has authorized under rule 140.

(B) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

(C) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

Rule 143

Status of the accused following appeal

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.

(B) Where the accused is not present when the judgement is due to be delivered, either as having been acquitted on all charges or for any other reason, the Appeals Chamber may deliver its Judgement in the absence of the accused and shall, unless it pronounces his or her acquittal, order his or her arrest or surrender to the Tribunal.

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PART XII

REVISION PROCEEDINGS

Rule 144

Request for revision

Where a convicted person or the Prosecutor seeks the revision of a conviction under article X (A 50 ILC) of the Statute, they shall file with the Registrar and serve upon the other party a written application for revision, setting forth the grounds. The Supplementary Rules shall provide for the form and any related requirements of an application for revision.

[Note: The grounds for revision need to be elaborated. These are addressed to some extent in article 50 of the ILC draft Statute. Other possible grounds include the conviction being based on false evidence or a serious breach of duty by a Judge involved in passing sentence.]